

NOV 03 2006

**EMPLOYER STATUS DETERMINATION**  
**Dakota Northern Railroad, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Dakota Northern Railroad, Inc. (DN) , as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding DN was provided by George LaPray, General Manager of DN. According to Mr. LaPray, DN is owned by KBN Incorporated<sup>1</sup>, a holding company which also owns Minnesota Northern Railroad, Inc., (MNR) and St. Croix Valley Railroad Company (SCVR), both employers under the Acts (B.A. Nos. 4648 and 2646, respectively). DN began operations on February 5, 2006. According to Mr. LaPray, it is the intent that "Dakota Northern Railroad and Minnesota Northern Railroad will operate a 'common payroll' with all payroll activity performed in the name of Minnesota Northern Railroad, Inc."

In Surface Transportation Board (STB) Finance Docket No. 34816, DN filed a notice of exemption to lease and operate approximately 69.79 miles of rail line from BNSF Railway Company (BNSF). In a concurrent action, (STB Finance Docket No. 34817), KBN filed a notice of exemption to continue in control of DN upon DN's becoming a Class III carrier. In that notice, KBN stated that the rail lines operated by MNR and SCVR do not connect with the lines being leased by DN, the continuance of control is not part of a series of anticipated transactions which would connect the rail lines of MNR, SCVR and DN with each other or with any railroads in their corporate family, and neither DN nor any of the rail carriers controlled by KBN are Class I or Class II rail carriers. The stated purpose of the transaction "is to achieve operating economies, to improve rail service to the public, and to improve the financial viability of the commonly controlled rail carriers".

Section 1(a) (1) of the Railroad Retirement Act (45 U.S.C. § 231(a) (1)), insofar as relevant here, defines a covered employer as:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

---

<sup>1</sup> In a decision issued January 24, 2001, we found KBN, Inc. was not an employer under the Acts. B.C.D. 01-13.

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad

\* \* \*

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that DN is a carrier operating in interstate commerce. Accordingly, it is determined that DN is an employer within the meaning of section 1(a) (1) (i) of the Railroad Retirement Act (45 U.S.C. § 231(a) (1) (i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of February 5, 2006, the date it began operations.

Original signed by:

Beatrice Ezerski  
FOR THE BOARD  
Secretary to the Board